

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 768 of 2001

in

SPECIAL CIVIL APPLICATION No 2649 of 2001

And

Civil Application No.8603 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

and

Hon'ble MR.JUSTICE N.G.NANDI

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

KS PRASAD SECRETARY

Appearance:

Mr.L.R.Pujari, learned AGP for the appellant

Mr.Mihir Joshi for respondents Nos.1 to 5

Mr. Paresh Upadhyay for respondent No.6

Respondent No.7 is the functionary of the appellant-
State of Gujarat.

CORAM : MR.JUSTICE M.R.CALLA

and

MR.JUSTICE N.G.NANDI

Date of decision: 17/08/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

1. Admit. Issue notice. Mr. Mihir Joshi waives service of notice of admission on behalf of respondents Nos.1 to 5. Mr. Paresh Upadhyay waives service of notice of admission on behalf of respondent No.6. Respondent No.7 is the functionary of the appellant State of Gujarat. On the request of parties, the main Appeal itself was finally heard

2. This Letters Patent Appeal is directed against the interim order dated 1.5.2000 passed by the learned single Judge in Special Civil Application No.2649/2001. Five petitioners, petitioner No.1 Mr.K.S.Prasad working as Secretary to the Chief Justice, High Court of Gujarat, Ahmedabad, petitioner No.2 Mr.A.C.Naik working as Addl. Secretary to the Chief Justice, High Court of Gujarat, petitioner No.3 Mr. L.T.Sharma working as Addl. Secretary to the Chief Justice, High Court of Gujarat, petitioner No.4 Mr.G.H.Barot, Assistant Secretary to the Chief Justice, High Court of Gujarat and Mr. K.Parmeshwaran, Assistant Secretary to the Chief Justice, High Court of Gujarat, had filed the Special Civil Application No.2649/2001 with the prayers as under:-

"24. On the grounds stated above and those that may be urged at the time of hearing of this petition, the petitioners pray:

- (A) The Hon'ble Court may be pleased to issue a writ of mandamus or any other appropriate writ, order or directions directing the respondent State to forthwith give the petitioners the pay scales which were being given to the earlier incumbents of the respective posts and revise the pay scales of the posts of the Assistant Secretary at Rs.12000-16900 and Secretary and Additional Secretary at Rs.14300-18300 respectively and give all consequential benefits of arrears of salary etc. consequent upon such revision to the petitioner from the date of their appointment within a stipulated period.
- (B) Be pleased to allow this petition with costs and be pleased to quantify the costs.
- (C) Be pleased to grant such other and further reliefs as may be deemed just and proper by the

Hon'ble Court in the facts and circumstances of the case.

25. Pending admission hearing and final disposal of this petition the Hon'ble Court may be pleased to direct the respondent State to issue necessary orders permitting the Assistant Secretary to the Hon'ble Chief Justice to draw salary in the pay scale of Rs.12000-16500 and the Additional Secretary and Secretary to the Hon'ble the Chief Justice in the pay scale of Rs.14300-18300 with immediate effect till it finally decides the revised pay scales of the aforesaid posts."

3. In this Special Civil Application while issuing rule, to be heard with Special Civil Application No.5079/94, interim order was passed by the learned single Judge to the effect that till final disposal of this petition, there shall be interim relief in terms of the following directions subject to the result of this petition:-

(I)(a) Petitioners Nos.4 and 5, presently working as Assistant Secretaries to the Hon'ble Chief Justice, shall be placed in the scale of Rs.12000-16500 (pre-revised pay scale of Rs.3500-5000) w.e.f. the date of their appointment or w.e.f. 1.1.1996, whichever is later.

(b) Petitioners Nos.1,2 and 3 who are in the higher cadre of Secretary/Additional Secretary to the Hon'ble Chief Justice, shall be placed in the pay scale of Rs.14300-18300 (pre-revised scale of Rs.4500-5700) w.e.f. 1.1.1996 or from the date of their appointment, whichever is later.

(c) The respondents shall accordingly fix the pay of the petitioners in terms of the aforesaid directions within one month from the date of receipt of a copy of this order and the arrears of difference of salary and allowances shall be paid on that basis within two months thereafter.

II(i) Since petitioner No.4 Mr.G.H.Barot has retired on 28.2.2001, apart from the payment of arrears of difference of salary and allowances on the basis of the aforesaid directions, the Respondents shall also compute the pension, gratuity and other retiral benefits and pay petitioner No.4 retiral benefits also on that basis within four months from the date of receipt of a copy of this

order.

(ii) As and when any other petitioner/s retire/s during pendency of this petition, the respondents shall compute their retiral benefits on the basis of their pay scales granted to them in terms of the aforesaid directions and payments shall also be made on that basis."

4. State of Gujrat has preferred the present Letters Patent Appeal against the above interim order while the Special Civil Application is still pending.

5. Mr.L.R.Pujari, learned AGP appearing on behalf of the appellant, has argued before us that the relief, which has been granted by the learned single Judge, tantamounts to the final relief, as has been prayed in the petition and such relief, amounting to final relief, could not be granted by way of interim order.

6. We have heard learned counsel and have gone through the impugned interim order dated 1.5.2001 passed by the learned single Judge. We find from the contents of the impugned order dated 1.5.2001 that the learned single Judge has found anomaly in the pay scale to be obvious inasmuch as the senior most Private Secretaries to the Judges of this Court, who are appointed in the upgraded posts of Class I Officers, draw salary in the pay scale of Rs.10,000-15,200 (pre-revised scale of Rs.3000-4500). Such senior most Private Secretaries to the Judges upon promotion to the post of Assistant Secretary to the Chief Justice, they are placed in the scale of Rs.8,500-14,100 (pre-revised scale of Rs.2500-4500) and upon further promotion to the higher post of Additional Secretary/Secretary to the Chief Justice, they are continued in the same pay scale.

7. We further find that in view of the aforesaid anomaly, incumbent of post of Assistant Secretary, at the relevant time, had earlier filed Special Civil Application No.5079/1994 and in that Special Civil Application, after giving an opportunity to be heard to the Government, the Court had passed orders on 7.7.1994/30.11.1994 requiring the State Government to pay to the Assistant Secretaries to the Chief Justice the pay scale of Rs.3500-5000 with effect from the date of appointment on the post of Assistant Secretary. The court was informed that the said scale of Rs.3500-5000 was revised to Rs.12,000-16,500 with effect from 1.1.1996 and that the new higher pay scale was Rs.14,300-18,300 (pre-revised scale of Rs.4500-5700).

8. Mr. Mihir Joshi has submitted that against the orders passed in the earlier Special Civil Application No.5079/94, a Letters Patent Appeal had been preferred by the State of Gujarat and the same was dismissed and in this view of the matter, the learned single Judge has rightly passed the order on the same line as was passed in Special Civil Application No.5079/94 on 7.7.1994/30.11.1994.

9. Mr. L.R.Pujari, learned AGP has submitted that not only that the present impugned interim order gives the relief in the nature of final relief, the notice of the Special Civil Application, which was issued on 16.4.2001 and which was made returnable on 24.4.2001, was served on the Department on 19.4.2001 only and, therefore, on the returnable date the learned AGP has no instructions from the Legal Department. He has further submitted that it is true that on 24.4.2001 further opportunity was granted and the matter was posted on 1.5.2001, but he has submitted that there were certain holidays in between and, therefore, appropriate instructions could not be received.

10. In the facts and circumstances of this case, we suggested the learned AGP as well as the learned counsel for respondents Nos.1 to 5 herein that so far as the payment of arrears with effect from date of their appointment or with effect from 1.1.1996, whichever is later, is concerned, the same may be modified to place respondents Nos.1 to 3, who are in the higher cadre of Secretary/Additional Secretary to the Chief Justice in the pay scale of Rs.14300-18300 (pre-revised scale of Rs.4500-5700) with effect from 1.1.1996 or from the date of their appointment (without payment of any arrears), whichever is later and the interim relief be kept confined so as to place respondents Nos.4 and 5 in the scale of Rs.12000-16500 (pre-revised pay scale of Rs.3500-5000) w.e.f. the date of their appointment on the post or w.e.f. 1.1.96, whichever is later and payment to them be made accordingly by notionally arriving at their pay on that basis from 1.5.2001 and similarly respondents Nos.1 to 3 may be placed in the pay scale of Rs.14300-18300 (pre-revised scale of Rs.4500-5700) w.e.f. the date of their appointment on the post or w.e.f. 1.1.96 whichever is later and their pay as on 1.5.2001 be notionally arrived at on that basis and they may be paid accordingly from 1.5.2001 i.e. the date on which the order was passed by the learned single Judge. Mr. Mihir Joshi, on behalf of respondents Nos.1 to 5, has candidly agreed to such modification of the

interim order. The learned AGP Mr.L.R.Pujari submitted that he may be given a day's time to seek instructions from the Department. We, therefore, heard the arguments on 16.8.2001 but kept the matter for dictation of order today. Today when we called upon the learned AGP as to what are the instructions given to him, he submitted that Court may pass any appropriate order.

11. In normal course, in view of the fact that the order in similar terms has been passed by the learned single Judge as had been passed earlier at interim stage in Special Civil Application No.5079/94 and the Letters Patent Appeal filed by the State against such interim order had been rejected and that interim order has also been implemented, we would not have interfered with the order passed by the learned single Judge. However, the learned counsel for the respondents Nos.1 to 5 has been fair enough to candidly agree for the modification of the order, as indicated above and we find that ends of justice will be, therefore, served if the impugned interim order is modified as under:-

- (i) Respondent No.4 Mr.G.H.Barot, who has already retired on 28.2.2001, shall be paid the retiral dues as if he had been placed in the pay scale of Rs.12,000-16,500 (pre revised pay scale of Rs.3500-5000) w.e.f. the date of his appointment on this post or w.e.f. 1.1.96, whichever is later, and what would have been his notional pay on that basis on the date of his retirement i.e. 28.2.2001.
- (ii) Respondent No.5 Mr. K.Parmeshwaran shall be placed in the pay scale of Rs.12,000-16,500 (pre revised pay scale of Rs.3500-5000) w.e.f. the date of his appointment on this post or w.e.f. 1.1.96, whichever is later, and he shall be paid accordingly w.e.f. 1.5.2001, by arriving at his notional pay on that basis as on 1.5.2001.
- (iii) Respondents Nos.1 to 3 i.e. original petitioners Nos.1 to 3, namely, Mr. K.S.Prasad, Mr. A.C.Naik and Mr. L.T.Sharma, who are in the higher cadre of Secretary/Addl.Secretary to the Chief Justice, shall be placed in the pay scale of Rs.14,300-18,300 (pre-revised pay scale of Rs.4500-5700) w.e.f. the date of their appointment on the respective post or w.e.f. 1.1.96 whichever is later and they shall be paid accordingly w.e.f. 1.5.2001 by arriving at their notional pay on that basis as on 1.5.2001.
- (iv) As and when any of the respondents retire during

the pendency of the petition, the appellant herein shall compute the retiral dues as if he was drawing the pay in terms of the directions, as above.

(v) None of the respondents shall be paid any arrears for the period prior to 1.5.2001.

The impugned interim order passed by the learned single Judge is, therefore, modified as above, subject to the final outcome of the pending main Special Civil Application with the further order that in case the Special Civil Application fails, the appellant shall be entitled to recover the excess amount, which may be paid to respondents in pursuance of this order and till the pendency of the Special Civil Application the rights and obligations of the parties shall be governed by this order.

12. This Letters Patent Appeal is partly allowed, as above, with no order as to costs.

13. Since the main Appeal has been decided, Civil Application for stay is rejected.

(M.R.Calla,J)

(N.G.Nandi,J)